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11 Attorneys for Defendants
12 VERIZON INTERNET SERVICES INC. AND
13 GTE.NET LLC D/B/A VERIZON INTERNET
SOLUTIONS

17 JOHN SCHNEIDER on behalf of
18 himself and all others similarly
situated,
Plaintiff.

vs.

20
21 VERIZON INTERNET SERVICES,
22 INC and GTE.NET LLC d/b/a
VERIZON INTERNET SOLUTIONS,
Defendants.

CASE NO. CV 08-07856 R CWx

**ORDER GRANTING DEFENDANTS
MOTION TO DISMISS PURSUANT
TO FED. R. CIV. P. 12(b)(6)**

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The Honorable Manuel L. Real

ORDER

2 The Motion to Dismiss the First Amended Complaint Pursuant to Fed.
3 R. Civ. P. 12(b)(6), filed by Defendants Verizon Internet Services Inc. and
4 GTE.NET LLC d/b/a Verizon Internet Solutions (collectively, "Verizon"), came for
5 hearing before this Court on March 16, 2009, at 10:00 a.m., with Defendants and
6 Plaintiff appearing through counsel.

7 After considering the briefs, arguments, and all other materials
8 properly presented to this Court, the Court concludes:

20 Based on the foregoing and a review of the record, the Court further
21 concludes that the claim that Verizon’s ETF is “unconscionable” likewise lacks
22 merit. *See H. S. Perlin Co. v. Morse Signal Devices*, 209 Cal. App. 3d 1289, 1301-
23 02, 258 Cal. Rptr. 1, 9 (Cal. Ct. App. 1989).

24 Plaintiff's other claims are derivative of the section 1671 claim and
25 therefore fail.

26 Plaintiff's claim for damages under California's Consumer Legal
27 Remedies Act ("CLRA") is barred for the additional reason that Plaintiff did not
28 strictly comply with the pre-filing notice requirement that is a prerequisite to a

1 claim for damages. *See* Cal. Civ. Code § 1782(a); *Outboard Marine Corp. v.*
2 *Superior Court*, 52 Cal. App. 3d 30, 124 Cal. Rptr. 852 (Cal. Ct. App. 1975).
3 Plaintiff failed to comply with section 1782(a)'s requirement that the notice "be
4 sent . . . to the place where the transaction occurred or to the person's principal
5 place of business within California." Verizon's acknowledgement that it received
6 Plaintiff's letter did not constitute a waiver of Verizon's right to attack the
7 sufficiency of Plaintiff's notice.

8 Accordingly, IT IS HEREBY ORDERED that:

9 Verizon's Motion to Dismiss is GRANTED and the First Amended
10 Complaint is DISMISSED WITH PREJUDICE, without leave to amend.

11 **IT IS SO ORDERED.**

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14 DATED: March 18, 2009
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MANUEL L. REAL
UNITED STATES DISTRICT COURT